

COVERT ACTION—SCENARIO, ISSUES TO CONSIDER, IN-CLASS OPERATIONAL PROPOSALS

Since most of the details regarding the conduct of covert action or actual covert action activities remain classified, the scenario drafted below is a hypothetical and lacking the degree of detail that would normally be available in a case study based on an actual activity. Nonetheless, the legal issues raised in this scenario and the related legal and policy analysis are based on legal and policy issues often raised by actual covert action programs.

Fictional Republic of Constantine Operational Scenario

Context: You are a lawyer in the Office of General Counsel at the CIA and have been assigned to the recently established Constantine Operations Center, which is responsible for intelligence activities associated with the Republic of Constantine (ROC).

The Republic of Constantine (ROC): The ROC is located in a strategically important area for the U.S. A key longtime ally of the U.S.—the country of Hollis—shares a 250-mile border with the ROC. There is a very small U.S. diplomatic presence in the ROC. Given that limited presence and the substantial capabilities of the ROC intelligence service, traditional CIA clandestine intelligence activities are very difficult inside the ROC. For more than 20 years, U.S.-ROC foreign relations have been strained. During this period, the ROC has developed a nascent missile technology program (assisted by the North Koreans) and a nuclear energy program (providing essential energy for both the ROC military and civilian populations). Recent intelligence reporting indicates that ROC leadership has secretly started a nuclear weapons effort (has been constructing nuclear facilities in the ROC), and intelligence assessments indicate that within 12 to 18 months the ROC could have the technical elements to begin constructing or testing a nuclear device.

At the same time, the current regime in the ROC is facing for the first time significant internal political opposition. The opposition is driven by decades of leadership corruption and authoritarian tactics. Political opponents are often jailed, and there have been no democratic elections during the past decade. Recent national protests reflect a broad dissatisfaction with the ruling party and its leader. Intelligence reporting indicates that there exists a central organizing committee of the opposition and that the opposition is supported by a cadre of retired former senior ROC military officers. The ROC opposition has also entered into an informal alliance with terrorist organizations operating in neighboring countries, primarily to obtain weapons and other military equipment. The exact border between the ROC and Hollis has been in dispute between the two countries for the past 25 years. As recent internal protests have grown in the ROC, the president of the ROC has increased his anti-Hollis rhetoric as a means of rallying greater public support. Recent events came to a head last week when the ROC falsely claimed that Hollis had conducted a military incursion into the ROC. In response, the ROC military occupied several border towns within Hollis. (U.S. imagery indicates that Hollis military forces had not incurred into the ROC.) At an emergency U.N. Security Council meeting last week, the ROC ambassador invoked the ROC's right of self-defense under the U.N. Charter to defend itself from Hollis aggression. The president of the ROC used this event to issue a sharply worded

threat of further significant military action against Hollis and warned the U.S. not to become involved.

The U.S. National Security Council (NSC) met in a late evening session last Friday to prepare a summary for the president of U.S. national security interests implicated in the ROC-Hollis crisis and to present options and recommendations. The NSC informally expressed support that U.S. government policy priorities should include (a) preventing the ROC from acquiring nuclear weapons capabilities or providing nuclear weapons assistance to North Korea; (b) replacing the current ROC regime and, ultimately, restoring a democratic process to the ROC; and (c) enhancing regional security, including mitigation of terrorist threats.

The director of the CIA was tasked by the NSC Principals Committee to develop a range of operational proposals both to acquire intelligence on the situation in the ROC and to advance U.S. policy priorities. As the lawyer within the Constantine Operations Center, you will attend a brainstorming meeting on [DAY OF SEMINAR] in which various operational proposals will be discussed. You will need to provide concise legal guidance in this meeting to identify potentially significant legal constraints for each proposal being discussed—especially on possible covert action proposals.

Issues to Consider

In advance of the [DAY OF SEMINAR] meeting, you should take a few minutes to think about your role in this meeting. Please spend a few minutes and write your thoughts down on the following initial questions:

A. Take a look at the National Security Act's section on covert action. Create a short "cheat sheet" that you might want to have at your side during this meeting so that you can identify potentially significant legal authorities or restrictions that might affect proposals under consideration. Since this will be a review of intelligence operational proposals, you will want to focus on language in the statute limiting or prohibiting certain *types* of covert action or other statutes that limit U.S. government action in general and that are binding on the CIA. At a minimum, you will need to spot possible legal issues that arise in the proposals during this meeting and be prepared to identify whether additional legal analysis will be required. *Note:* For the purposes of this meeting, you can assume that the process and notification requirements in the statute (e.g., requirements associated with the process, contents and oversight requirements of a written finding) will be satisfied by the NSC and the CIA.

B. You know that one likely proposal will involve "winning the hearts and minds" of the ROC population through a covert propaganda campaign. You suspect that this likely will include covertly using print and online media sources to promote the opposition in general and encourage more mass demonstrations. As such, read the statute to consider how practical operations may be limited by the terms of the statute.

C. Consider what “successful lawyering” will look like in this meeting. To get clarity on practical aspects of this question, it may help to identify what poor lawyering might involve.

D. Identify the types of knowledge and skills that you think you will need to succeed as a lawyer in this type of a meeting.

In-Class Operational Proposals

In class, students will be provided the following scenarios and have 10 minutes to issue spot (working in small groups of three students each).

1. A concerted full court effort to recruit additional clandestine assets who can provide ground truth intelligence on the following priorities: ROC nuclear capabilities and intentions, ROC presidential stability (e.g., popular support), and relationships between ROC opposition groups and regional terrorist elements.
2. Working with the Hollis intelligence agency to exchange intelligence on the ROC and to enhance the ability of the Hollis intelligence agency to collect intelligence in the ROC—with the understanding that intelligence will be shared with the U.S.
3. Use of all forms of propaganda to influence the population of the ROC to withdraw support from the president of the ROC. This would include mass rallies and worker strikes. Given the number of ROC leaders who have laundered money resulting in investments in the U.K., one useful propaganda media source may be the Financial Times of London (as it is widely read in the ROC). Finally, there is a diaspora of ROC immigrants in the Atlanta area, and a proposal exists to influence this group of ethnic ROC persons to promote real democracy in their interaction with relatives/friends in the ROC.
4. Efforts to disrupt equipment and facilities and related equipment and technology reasonably associated with an ROC nuclear weapons program.
5. Joint CIA and U.S. special forces operations designed to (a) retake occupied Hollis territory, (b) remove the ROC president through force, and/or (c) destroy ROC military facilities reasonably associated with a nuclear weapons program.